

John Pole, Esq; Ap-  
pellant. } Samuel Gardiner,  
Clerk, Respon.

The Appellant's CASE against a Decree in the  
Court of Exchequer.

THE Respondent is now, and for 20 Years past hath been Rector of the Parish of Eckington in Derbyshire, a Living worth 400*l. per Ann.* and his Father, Dr. Gardiner for 40 Years immediately before him, and one Dr. Love for many Years immediately before him, were Rectors there; which is a large Parish, and consists of a Town call'd Killamarsh, and of four other Towns or Quarters call'd Eckington-Quarter, Mosbrough-Quarter, Spinkhill-Quarter, and Troway-Quarter.

That during the Life-times of the respective Incumbents, and time out of mind, there hath been paid within the said Parish, certain yearly *Modus's*, Rates or real Compositions, in lieu of Tyth-Hay; to wit, 1*d.* an Acre for all low Meadows, and 8*d.* an Acre for all the high Meadows (except in Troway-Quarter) for every Year the same have respectively been mowed for Hay; and that no Tyth-Hay hath ever been paid in kind therein; and for Troway-Quarter certain small Sums of Monies for every Farm, some more, some less: And the low Meadows were well known from the high Meadows, by the running of the River Rother thro' the said Parish, which sometimes overflows the low Meadows, but never the high Meadows.

That the Respondent taking causles displeasure at all his Parishioners, being above 200 Land-holders, about three Years ago demanded Tyth-Hay of them in kind, and in order to recover the same, and unhinge all Contracts betwixt Landlords and Tenants, brought his Bill in the Exchequer against the Appellant, and thereby demanded Tyths of Hay in kind, for the Appellant's Lands in Killamarsh and Spinkhill-Quarter, where his Lands lie; to which the Appellant put in his Answer, and insisted on the said Ancient respective Rates or *Modus's* for the whole Parish, and particularly of 8*d.* an Acre for his Meadows, being all high Meadows in Killamarsh and Spinkhill-Quarter, and that the same had been paid time out of mind, in lieu of Tyth-Hay, and so accepted by the Respondent and all his Predecessors, Rectors there.

The Cause being at Issue, the Appellant prov'd, by many Witnesses, the *Proofs.* said Ancient respective Rates and *Modus's*, constantly paid to, and accepted by the Respondent and his Predecessors, in lieu of Tyth-Hay within the said Parish; and particularly the said 8*d.* an Acre for the Appellant's particular high Meadows then only in dispute: And proved by Ancient Tything-men of the Respondent's Father's his constant directions in collecting, and Declarations that the said *Modus's*, or Rates of 1*d.* and 8*d.* per Acre were all that could be taken for Tyth-Hay in the whole Parish, except in Troway-Quarter; and also except for one Close, call'd Abbot-Meadow, of six Acres, the Owners whereof had, as he declar'd, broke the *Modus* many Years before, by refusing to pay the same, when the Floods had taken away the Hay: And the Appellant also prov'd, that the said *Modus's* had been so inviolably observ'd in all times, that even when the Floods came and took away the whole Hay, or spoil'd it (which often happen'd) yet the Rectors

ctors always had the *Modus* of 12d. an Acre for those low Meadows, insisting they ought so to have the same, if the Hay cut; for that other Years, when not flooded, and the Tyths thereof were worth three times the value of the *Modus* (as it is generally prov'd to be in most parts of the Parish) yet the Rectors could have no more than the *Modus*.

Proofs.

And the Respondent only prov'd an Instance of *Bentley* and *Harrison*, two Quakers, whose Tyth-Hay he fetch'd in kind: And that about twenty Years ago one Mr. *Murphy*, a Foreigner, came to live on the Appellant's Farm; and he being abroad, and his Wife refusing to pay the *Modus*, not understanding it, the Respondent's Tyth-men took the Hay in kind; which when the Appellant heard of in *Shropshire*, where he then liv'd, he came over, to know the Respondent's Reason, for offering to break the *Modus*, in his absence, with his Tenant, who was but a Stranger to the Customs of the Parish; on which the Respondent own'd his Tything-men had done wrong, but promis'd to set it right, and accepr the *Modus* ever after; which he did to 1704. and he, or his Lessees, gave frequent Receipts after for the same, as such *Modus*: And the Respondent also, by two poor ignorant Women, who he mostly maintains on Charity, pretended to prove another Instance of Tyth-Hay being paid in that large Parish fifty Years ago; but those two Witnesses Credits are Impeach'd by Credible Witnesses, and their Testimonies amount to nothing. And he also endeavour'd to prove, that 12d. and 8d. an Acre is the value of the Tyths of Hay; tho' in the Appellant's present Case, the Respondent's Tything-man proves his Tyth-Hay, in dispute, near twice the value of the *Modus*, and the Appellant proves it above three times the value.

Cause heard  
23d Februa-  
ry, 1705.

The Cause came to Hearing 23d of February, 1705. when the Depositions of the Witnesses were read; and the Court was pleas'd to take time to consider of the said Modusses or Rates of 12d. and 8d. an Acre.

Decree 23d  
June, 1706.

The Cause standing for Judgment 23d June, 1706. the Court declar'd the said Payments of 12d. and 8d. an Acre, were no Modusses, but Compositions; and, that Tyth-Hay ought to be paid in kind for these Lands, for which the same Compositions are alledged payable, and thereupon Decreed the Appellant to account with and satisfie the Respondent for his Tyth-Hay with Costs; and as to the Modusses in *Troway*-Quarter, the Court did Establish the same as set forth in the Respondent's Answer to a Cross-Bill exhibited against him by the Appellant, and by the Right Honourable the Lady *Frecheville* Lady of the Mannor, *John Bright* and *Thomas Hewer*, Esquires, and several others Land-Owners of the said Parish.

The Appellant humbly hopes, and is advis'd, that the said Decree, as to the said 12d. and 8d. an Acre being no good Modusses, is erroneous, and ought to be revers'd; the Reason given for which Judgment, being, that the same Modusses were too great, or near the value of the Tyths in kinds, and that Prescriptions had their beginnings before King *Richard I.* Time, which was said was accounted the time of Memory, when 12d. and 8d. might be the value of the Inheritance of an Acre of Meadow, for any thing we know.

But the Appellant is advis'd the same are good Modusses in Law, having been inviolably observed beyond all Memory, and being fixt and certain, and what may be permanent; and that there is not any Rule in Law, to stint or limit the values of Modusses, which all at first were Contracts, and proceeded from Compositions real, which were frequently made, till the Statute of the 13th Year of Queen *Elizabeth*, which was above 350 Years after *Richard the First's* Time: And he is further advis'd, That an Owner of a Parish might have endowed a Church with more than the value of the Tyths, if he had pleas'd, as well as have contracted for twenty times less than the value; and that an inviolable Usage, is in this and most other Cases, the sole Evidence of Right, tho' at this distance <sup>no</sup> of time <sup>no</sup> Accounts of the

Rea-

Reasons or Beginnings of such Usages can be given, and therefore they are call'd Prescriptions ; but if we go to the values in the Times of *Richard I.* a Farthing an Acre wou'd scarce be judg'd a good Modus, according to the Reason of this Judgment at this Day, tho' there are late Judgments of the Court of Exchequer, as the Appellant is advis'd, that confirm 4*d.* *per Acre* for Marsh Land in *Kent*, and some 6*d.* an Acre in other places.

It's plain from Reason (as well as Usage in the Alienation-Office) that Meadow-Lands in antient Times, were of much greater value than of late Years, because of the new Inventions to improve other Lands to bear Hay.

Most Parsons quarrel with Modusses of 12*d.* or 6*d.* for a Farm of 20 or 30*L* *per Annum*, (being such as by this Decree are established in *Trotway-Quarter*) and by the unwariness of ignorant Tenants, on small alterations being made, get them set aside ; so that within a few Years past, more Modusses have been broke, than for many Ages before, but very few, have been complained of, that were half, or near the value of the Tyths ; but if this succeed, several hundreds of Parishes are likely to suffer the same Fate, and be unhinged in all their inviolable Modusses, and manners of Tything.

*Therefore, the Appellant most humbly hopes, from the great Justice of his Case, and the Case of the rest of the said Parish, and to prevent the multiplicity of Suits and endless Confusion such a precedent would make, quite through the Kingdom, the said Decree should be revers'd.*

Spencer Cowper,  
W. Jeffop.

John Pole, Esq; Appellant.  
Samuel Gardiner Respondent.

*Samuel Gardiner* Respondent

## The Appellant's Case

## To be Heard

1908  
W. H. Gandy